



WILLIAM J. LEAHY
CHIEF COUNSEL

The Commonwealth of Massachusetts
Committee for Public Counsel Services
470 Atlantic Avenue, Suite 700, Boston, MA 02210

TEL: (617) 482-6212
FAX: (617) 988-8495

PATRICIA A. WYNN
DEPUTY CHIEF COUNSEL
PRIVATE COUNSEL DIVISION

ANDREW SILVERMAN
DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

WRITER'S DIRECT DIAL NUMBER

STATEMENT OF CPCS CHIEF COUNSEL WILLIAM J. LEAHY
IN SUPPORT OF H.2741

Representative Lewis and Senator Berry are to be commended for recognizing the inadequate rates which are paid to the 2,800 private attorneys who devote a portion of their professional time to the representation of the Commonwealth's poorest citizens. This representation takes many forms; from criminal defense, to "children in need of supervision," to termination of parental rights, to defense against involuntary civil commitment, and many more. But every CPCS case involves two certainties: the client cannot afford to hire an attorney, and he or she is entitled by law to the assistance of counsel.

This is difficult and demanding legal work. It deserves to be compensated at a significantly higher rate than at present. The bulk of CPCS cases, criminal defense in District Court, are billed at thirty dollars (\$30) per hour. Virtually all other cases, including Superior Court criminal defense and the representation of children and parents in Care and Protection proceedings, are billed at thirty-nine dollars (\$39) per hour. Murder cases only are billed at fifty-four dollars (\$54) per hour.

In 1994, CPCS through its Budget Subcommittee studied the adequacy of the hourly rates paid to assigned counsel in relation to the cost of maintaining a private legal practice in the Commonwealth, and in comparison to the rates of compensation paid to counsel in other jurisdictions. CPCS concluded that by either measure, the rates were woefully inadequate. In May, 1994, therefore, CPCS approved, subject only to appropriation, hourly rates of \$50 for District Court criminal cases, \$65 for Superior Court criminal and all civil cases, and \$85 for murder cases. The Committee adopted these benchmarks by unanimous vote, after

thorough examination. In November, 1994, the Massachusetts Bar Association's special committee on Criminal Justice Attorney Compensation issued its report which endorsed the CPCS-approved rates. The MBA committee, which was chaired by former MBA President John Callahan and included among its members former Senate minority leader David Locke, conducted its own hearings and issued a written report which I am presenting to you today.

Every CPCS budget proposal since 1994 has included a request for an appropriation sufficient to raise the hourly rates to the approved levels. Yet the rates paid today are only marginally higher than the woefully inadequate levels of five years ago. Again this year, we have presented to the House and Senate Committees on Ways and Means the case for full funding of these increases. Given the extensive cost (\$34.6 million) of our proposal, we have also informed the Committees that the alternative of increasing the rates by five dollars per hour across the board would have a lesser cost of \$10.4 million.

We have also informed the Ways and Means Committees that CPCS clients have paid just under \$29 million this decade through payment of the \$100 counsel fee (\$12 million) or as a contribution toward the cost of counsel by persons whom the judge finds to be "indigent but able to contribute" under Supreme Judicial Court Rule 3:10 (\$17 million). These contributions go directly into the General Fund. The contributions from CPCS clients have increased every year, to a record total of just over \$5.5 million in fiscal year 1998.

The lawyers who represent indigent CPCS clients perform a genuine public service. They absorb their own overhead. They are restricted to an annual billing limit of no more than 1,800 hours, although most cannot afford to work nearly that many hours at such low rates. They pay for their own training, which is required by CPCS as a condition of their certification to accept assignments. They are required to observe CPCS Performance Standards which are the most comprehensive in the nation. Their every case, be it criminal or civil, involves a client in peril as a result of concerted state action. The simple truth is that they deserve a significantly higher level of compensation for the vital service which they perform.

April 6, 1999